

LINDA BALDWIN JONES, Bar No. 178922
THEODORE FRANKLIN, Bar No. 168305
EZEKIEL D. CARDER, Bar No. 206537
WEINBERG, ROGER & ROSENFELD
A Professional Corporation
1001 Marina Village Parkway, Suite 200
Alameda, California 94501
Telephone (510) 337-1001
Fax (510) 337-1023
E-Mail: lbjones@unioncounsel.net
tfranklin@unioncounsel.net
ecarder@unioncounsel.net

Attorneys for Respondent
STATIONARY ENGINEERS LOCAL 39 HEALTH AND
WELFARE TRUST FUND

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CITY OF COLFAX,

Petitioner,

v.

STATIONARY ENGINEERS LOCAL 39
HEALTH AND WELFARE TRUST FUND,

Respondent.

No. C 12-00281 MMC

**STIPULATED ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
CASES ARE RELATED AND
STIPULATION TO CONSOLIDATE
CASES; [PROPOSED] ORDER**

[L.R. 3-12; Fed .R.Civ. P. 42]

Pursuant to Civil Local Rules 3-12, 7-11 and 7-12, the Parties, by and through the undersigned counsel, hereby stipulate and agree as follows:

Petitioner City of Colfax brought two actions to vacate the same arbitration award issued by Robert M. Hirsch on October 18, 2011. The first action was filed in the Northern District of California on January 18, 2012 and is pending before this Court as Case No. CV12-00281 MMC. The second action was filed in the Superior Court of California, County of Alameda, on January 27, 2012, as Case No. RG1261442, and subsequently removed by Respondent Stationary

1 Engineers Local 39 Health and Welfare Trust Fund (“Trust Fund”) on February 2, 2012, upon
2 which it was assigned Northern District of California Case No. CV12-0562 EDL.

3 In CV12-00281 MMC, Petitioner alleges that the arbitration award should be vacated or
4 modified under provisions of the Federal Arbitration Act and, in CV12-0562 EDL, Petitioner
5 alleges that the arbitration award should be vacated or modified under provisions of the California
6 Arbitration Act. The actions concern the same parties and the same arbitration award. It appears
7 likely that there will be an unduly burdensome duplication of labor and expense or conflicting
8 results if the cases are conducted before different judges. Moreover, the actions involve common
9 questions of law, including whether the arbitrator exceeded his powers in rendering the award.

10 Accordingly, the parties respectfully submit that the cases are related and hereby stipulate
11 to relate the two cases pursuant to Civil Local Rule 3-12.

12 In addition, should the Court grant the Parties’ Stipulation to relate the two cases, the
13 Parties respectfully request, and hereby stipulate, to consolidate the two cases under Federal
14 Rules of Civil Procedure, Rule 42. Consolidation will enable the Court to deal most efficiently
15 with three pending motions:

16 1) In CV12-00281 MMC, Petitioner’s motion to vacate or modify the award noticed
17 for hearing at 9 a.m. on March 23, 2012. Respondent filed its opposition to this motion on
18 February 1, 2012 in compliance with Local Rule 7-3, which requires opposition to a motion to be
19 filed within 14 days of filing and service of a motion.

20 2) In CV12-00281 MMC, Respondent’s cross-motion to confirm the award also
21 noticed for hearing at 9 a.m. on March 23, 2012. This motion was filed on February 1, 2012, and
22 Petitioner’s opposition has not yet been filed.

23 3) In CV12-0562 EDL, Petitioner’s motion to vacate or modify the award was
24 originally noticed for hearing in Alameda County Superior Court on February 28, 2012, but the
25 hearing date in state court was automatically vacated when Respondent removed the case to the
26 United States district court. The motion was filed on January 27, 2012. No opposition has yet
27 been filed.

Provided the Court agrees to relate and consolidate the two matters, the parties stipulate to all three pending motions being heard by this Court at 9 a.m. on March 23, 2012. In relation to the third matter, the parties further stipulate that Respondent shall file its opposition to the Petition to Vacate on or before five court days after the Court's Order with respect to this Stipulation is filed, and Petitioner shall file its reply to the opposition on or before seven days after the filing and service of Respondent's opposition.

Dated: February 6, 2012

WEINBERG, ROGER & ROSENFELD
A Professional Corporation

By: /s/ Linda Baldwin Jones
LINDA BALDWIN JONES
THEODORE FRANKLIN
EZEKIEL D. CARDER
Attorneys for Respondent
STATIONARY ENGINEERS LOCAL 39
HEALTH AND WELFARE TRUST FUND

Dated: February 6, 2012

WILEY, PRICE & RADULOVICH, LLP

By: Monna R. Radulovich
JOSEPH E. WILEY
MONNA R. RADULOVICH
Attorneys for Petitioner
CITY OF COLFAX

PROPOSED ORDER

WHEREFORE, pursuant to the stipulation of the parties and good cause having been shown, IT IS ORDERED as follows:

1. CV12-0562 EDL is ordered related to the earlier filed case CV12-00281 MMC. Clerk is directed to reassign the later filed case of the undersigned. and the ~~two cases are hereby consolidated.~~

~~2. All filings henceforth shall be in CV12-00281 MMC.~~

2. ~~3.~~ The three pending motions in the two cases shall be heard by this Court at 9 a.m. on March 23, 2012. In relation to the motion currently pending in CV12-0562 EDL, the briefing schedule ~~in the pending motion to vacate or modify the arbitration award~~ shall be as follows: (1) any opposition shall be filed on or before five court days after this Order is filed, and (2) any reply by Petitioner shall be due on or before seven days after Respondent's opposition is filed and served on Petitioner.

IT IS FURTHER ORDERED, in light of Petitioner's having raised one ground for modification/vacatur solely in CV 12-0562 (see Notice of Removal, filed Feb. 2, 2012, Ex. A ¶ 26), the parties' stipulation to consolidate the cases in CV 12-00281 is hereby DENIED without prejudice to resubmission provided Petitioner first files an amended consolidated petition that includes all grounds on which Petitioner relies.

Dated: February 9, 2012


HONORABLE MAXINE M. CHESNEY
United States District Judge

130349/654675